

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of **Ohio Edison Company,** :  
**The Cleveland Electric Illuminating** :  
**Company, and The Toledo Edison** : Case No. **12-1230-EL-SSO**  
**Company** for Authority to Provide for a :  
Standard Service Offer Pursuant to :  
Section 4928.143, Revised Code, in the :  
Form of an Electric Security Plan. :

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**REPLY BRIEF**  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**INTRODUCTION**

The critics of the Stipulation miss the fundamental point of this case. We have a system currently that works quite well. The great majority of customers shop already. Those that do not shop are “currently” enjoying market prices that have resulted in savings to FirstEnergy customers. This is a great success. This case presents an opportunity to extend this success a little farther into the future. There is no reason to tinker with success.

## DISCUSSION

### I. The Opposition

Consumers' Counsel offers perhaps the broadest attack on the Stipulation. It identifies five themes, none of which have merit.

It claims that there were procedural shortcomings in the processing of this case. As the Commission is well aware, parties' rights in ratemaking proceedings are statutory, not Constitutional.<sup>1</sup> The relevant statutes provide for an opportunity for discovery and to participate in the hearing. Consumers' Counsel had discovery, presented its own witnesses, and cross-examined those of other parties. Consumers' Counsel and the other parties to the case have been afforded the process required by law.

Consumers' Counsel claims that the Stipulation lacks residential consumer support. This is factually incorrect. The Stipulation is supported by the City of Akron, Ohio Partners for Affordable Energy, the Cleveland Housing Network, the Consumer Protection Association, and the Empowerment Center of Greater Cleveland. While Consumers' Counsel might take the view that its endorsement is a prerequisite for residential support, the Commission should not give Consumers' Counsel this sort of veto power. In fact there is residential support of this Stipulation.

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<sup>1</sup> *Armco, Inc. v. Pub. Util. Comm.*, 69 Ohio St. 2d 401, 23 O.O. 3d 361, 433 N.E. 2d 923 (1982); *Cleveland v. Pub. Util. Comm.*, 67 Ohio St. 2d 446, 453, 21 O.O. 3d 279, 283, 424 N.E. 2d 561, 566 (1981); *Committee Against MRT v. Pub. Util. Comm.*, 52 Ohio St. 2d 231, 239, 6 O.O. 3d 475, 480, 371 N.E. 2d 547, 552 (1977) (P. Brown, J., dissenting).

It is claimed that the ESP proposed is less favorable than an MRO would be. As discussed in the initial brief in this case, the record is otherwise. Quantitatively, the proposed ESP is preferable according to Mr. Fortney's analysis. Even if this weren't the case, the flexibility that comes with the ESP is very valuable. The qualitative benefits only serve to further tip the balance in favor of the ESP.

The Consumers' Counsel objects that the DCR does not meet the statutory criteria but this is wrong. The criteria are:

the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.<sup>2</sup>

This test has been met. The Staff examined the reliability of the system and found that the companies were in compliance with the standards.<sup>3</sup> The purpose of the standards is to define how much reliability was enough from the perspective of the customers. That's why there were questionnaires used to develop the standards and that is why they are being used again now that the standards are being reviewed. Complying with the standards means that customers are getting the level of reliability that they want. Further, to achieve that compliance, the companies must be devoting sufficient resources, otherwise compliance could not happen. Fundamentally Consumers' Counsel has a policy dispute. The Staff believes that customers are getting value for their DCR investment while

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<sup>2</sup> R.C. 4928.143(B)(2)(h).

<sup>3</sup> Staff Ex. 2 (Testimony of P. Baker) at 5-6.

Consumers' Counsel does not. Consumers' Counsel wishes to dress this policy matter up as a legal issue. It is not. The statutory test has been met.

The final major point of the Consumers' Counsel is a disagreement about the length of the product to be offered. It can never be known which approach, the laddering of the Stipulation or the single year OCC system, would provide the lower price.

Although one would know, after the fact, the results of the auctions held, one could never know the results had the other option been chosen. Further the OCC approach assumes that, this clever structure will somehow outwit all the professionals who bid in these auctions. It strains credulity. The only thing that actually can be known with certainty is that the laddering proposed in the Stipulation must reduce the volatility of prices.<sup>4</sup> This goal alone makes extending the ESP worthwhile.

## **II. Individual Objections**

Several parties submitted witnesses who criticized the Stipulation and Recommendation in various ways. They will be discussed separately below.

### **A. 6% Discount for PIPP**

Sometimes it is difficult for parties to admit that a company proposal is simply a good deal. The Stipulation offers a supply for PIPP customers at 6% less than the result of the auction. Six percent less than the market price is good for all concerned. The objections are absurd. It is claimed that a lower price could be obtained. It is claimed

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<sup>4</sup>

Tr. II at 154.

that this is a benefit for FirstEnergy Solutions. There are providers in this case. None have come forward with a better proposal. It is not plausible that others would want to supply at prices even more below market. Getting *any* supply at a below market price is beneficial. This aspect of the proposal should be recognized for what it is, simply a good deal.

## **B. DCR**

Much criticism is presented about the DCR. Some would eliminate it, others would shape it differently. This criticism is misplaced. The facts are quite simple. The DCR mechanism works. The companies are in compliance with the relevant standards. The DCR mechanism is simply an alternative to a rate case. The Stipulation includes the continuation of the DCR mechanism, a great benefit for customers.

The Stipulation calls for a review of DCR costs to assure that they are not unreasonable, this is insufficient. Rather the review must be to assure that the costs are reasonable. In this view there is some sort of netherworld, a no-man's land, between "reasonable" and "unreasonable." A cost is reasonable or it is not. The decision is binary not a question of degree. The distinction made in the argument is not a difference. The DCR costs will be reviewed appropriately.

It is claimed that the DCR and a rate case are not a "wash." Ignoring the effect of the reduction of regulatory lag,<sup>5</sup> the DCR and a rate case are simply different means of

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<sup>5</sup> Reducing regulatory lag is of course the incentive that the DCR mechanism provides to the utilities to invest in their systems.

doing exactly the same thing. Both methods move the same costs into rates. The DCR does this sooner and the rate case later, but the costs are exactly the same. Over the long run there cannot be a difference, except for the reduction in lag which provides the incentive for the utilities to invest sooner in plant improvements.

### **C. The Fuel Fund is a Benefit**

Under terms of the Stipulation, FirstEnergy shareholders will provide \$9 million dollars to assist low-income customers with their electricity bills. Although this is clearly an unalloyed benefit of the Stipulation, there is criticism. It is argued that this \$9 million dollar contribution is a “benefit” to the applicants because it is electric bills getting paid. How FirstEnergy providing \$9 million of free service to low income customers is a “benefit” to FirstEnergy is impossible for an objective observer to understand. Clearly the beneficiaries are the customers whose bills are paid directly and the rest of the customers who otherwise pay for bad debts and PIPP. The argument to the contrary merely shows the range to which some will go in their effort to manufacture reasons to oppose what is really a simple and reasonable extension of a successful ESP.

### **D. Procedural Protections were provided.**

It is argued that the Commission moved too quickly in this case, that it had 275 days to act and should have taken them. The law of course provides that the Commission *can take no more than 275 days* to reach a conclusion in an ESP case.<sup>6</sup> How many days,

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<sup>6</sup> R.C. 4928.143(C)(1).



short of the maximum 275, the Commission *should* take is a matter of discretion.

Fundamentally this case is not complicated. As the proposal is merely to extend the existing plan two more years, an elaborate investigation is not really needed. It is clear how the proposal will work. It will work just like the current plan, successfully. That is why the plan can and should be approved quickly. Even if one were to take the opposite view and determine that the *status quo* is undesirable, the situation presented to the Commission is still simple and quick to resolve. This case is a referendum on the *status quo*. If the *status quo* is viewed as a success, as the Staff sees it, the proposal should be approved. If not, it should be rejected. It is just that simple.

It is argued that too little time was provided for parties to intervene. As it does not appear that any party was actually denied intervention, the criticism seems to have no point. It is suggested that there was too little time for discovery, but discovery was had. Consumers' Counsel for example filed at least six sets of interrogatories.

## CONCLUSION

Should the successful ESP of the FirstEnergy companies be extended for an additional two years? The Staff and a broad group of customers say yes. Analysis shows that the proposed ESP is superior to an MRO. The competitive market is flourishing. Extending the plan will provide a useful degree of stability and predictability. The Stipulation and Recommendation should be adopted by the Commission.

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**On behalf of the Staff of  
The Public Utilities Commission of Ohio**

## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by electronic mail, upon the following Parties of Record, this 29<sup>nd</sup> day of June, 2012.

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